

**REMARKS****Overview**

Claims 15-28 are pending in this application. Claims 15, 16, 17, 18, and 19 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

**Drawings**

The Examiner has objected to the drawings for failing to comply with 37 C.F.R. § 1.84(p)(5) because they include the following reference characters not mentioned in the description: item 152 (FIG. 2E), item 164 (FIG. 2H), and item 162 (FIG. 2G). The Applicant has amended the Specification to specifically refer to these reference characters. Therefore, it is respectfully submitted this rejection should be withdrawn.

The drawings have also been objected to as failing to comply with 37 C.F.R. § 1.84(p)(5) because they do not include "Figure 8" (page 49, line 10). The Specification has been amended to refer to "Figure 6" instead of Figure 8. Therefore, it is respectfully submitted that this objection to the drawing has been remedied. In addition, this same paragraph has been amended to make minor corrections.

**Issues Under 35 U.S.C. § 101**

Claims 15-24 have been rejected under 35 U.S.C. § 101 because the Examiner indicates the claimed invention is directed to non-statutory subject matter. This rejection is respectfully traversed. The Examiner applies a two-prong test without providing any citation to authority for this test. It is noted that the first prong of this test "whether the invention is within a

technological arts" is inconsistent and contrary to the U. S. Supreme Court's most recent decision interpreting 35 U.S.C. § 101. The Examiner is directed towards the most recent U. S. Supreme Court authority on patent eligible subject matter, *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 534 U.S. 124, 122 S.Ct. 593 (2001), noting that the language of § 101 is extremely broad. In addition, that same case also recognizes that § 101 is a dynamic provision designed to encompass new and unforeseen inventions. Therefore, the U. S. Supreme Court's most recent articulation of 35 U.S.C. § 101 provides a far broader view of patent eligible subject matter than that which the Examiner articulates and the two-prong tests suggested by the Examiner, without authority, is inconsistent with the governing Supreme Court authority. Therefore, this rejection must be withdrawn on that basis. It is further observed that should the Examiner be attempting to rely upon *Ex Parte Bowman*, 61 U.S.P.Q.2d 1669 (2001), (a non-precedential opinion) which applied a "technological art" rejection based on the Constitution, Article I, Section 8, in *J.E.M. Ag Supply, Inc. V. Pioneer Hi-Bred International, Inc.*, the U. S. Supreme Court specifically refused to add any additional constitutional requirements into 35 U.S.C. § 101. This statute means what it says. Compliance with this statute is all that is required to satisfy the constitution. Therefore, any reliance on *Ex Parte Bowman* is misplaced and inconsistent with law. Therefore, these rejections must be withdrawn on that basis.

Claim 15 has been amended to refer to a "computer-assisted" method. In addition, claim 15 has been amended to specifically recite the step of "electronically" providing marketing information. Therefore, it is respectfully submitted that this placed the invention within the technological arts. Thus, this rejection to claim 15 should be withdrawn. As claim 16 depends from claim 15, this rejection should also be withdrawn.

Claim 17 has been amended to refer to a "computer-assisted" method. In addition, claim 17 has been amended to recite that " wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis ". Therefore, it is respectfully submitted that claim 17 is clearly within technological arts.

Claim 18 has been amended to recite the step of "updating the strategic marketing plan with electronically supplied updated marketing information". Therefore, it is respectfully submitted that this amendment places claim 18 within technological arts. Therefore, this rejection should be withdrawn.

As claim 19 depends from claim 18, it is respectfully submitted this rejection should be withdrawn. As claims 20-24 depend from claim 17, it is respectfully submitted these rejections must also be withdrawn.

#### **Issues Under 35 U.S.C. § 102**

Claims 15-20 and 22-28 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent Publication No. US 2002/0103688 A1 to Schneider (hereinafter "Schneider"). These rejections are respectfully traversed.

First, Schneider is not legal prior art. Note that Schneider was filed on August 21, 2001 which is after the February 6, 2001 filing date of the present application. Therefore, Schneider is not prior art itself and all rejections based on Schneider must be withdrawn.

Schneider is directed to a production system, not a financial system as the present invention addresses. This is a fundamental difference which must be understood to fully appreciate the present invention. Schneider provides the producer the best combination of acres and the best combination of "expense" inputs, thus Schneider is clearly a production

managements system. Schneider does make reference to crop insurance levels (paragraph 17), but this reference is based on production cost, and not market risk and financial risk, as in the present invention. Clearly, Schneider's system is directed toward covering production costs. Thus, Schneider may be useful in optimizing production, or minimizing input costs.

The present invention, however, is directed towards a different problem and uses a different approach. The present invention uses an income approach as opposed to the cost approach of Schneider. **Unlike Schneider, the present invention takes into account market risk and financial risk together to create a marketing plan based on specific marketing strategies, selling price probabilities, and determinations of how, when, where to sell, and the probabilities of reaching price targets. Another way of explaining this difference is that Schneider is directed towards how to raise a crop and the present invention is directed toward how to sell the crop.**

Turning now to the claims, the language of the claims clearly distinguish over Schneider.

Claim 15 requires "developing agricultural marketing plans for agricultural producers requiring updated marketing information". The Examiner cites to paragraph 17, lines 28-40 and paragraph 26 of Schneider as disclosing this limitation. In paragraph 17, lines 28-40, Schneider merely discloses that:

"Marketing advisors using the present invention can assist farmers with production planning decisions to subsequently develop a marketing plan for the farmer based on the selected crop-acreage combination, the amount of contracted acreage and the level of crop insurance. Agricultural certified public accountants using the present invention can assist farmers with production planning decisions as part of their financial and investment advisory services. Also, agricultural equipment dealers using the present invention can assist farmers with production planning decisions and help the farmer determine whether equipment capacity is adequate to execute the production plan."

Thus, Schneider merely discloses the existence of a marketing plan which require knowledge of crop-acreage combination, the amount of contracted acreage, and the level of crop insurance. Schneider does not disclose how to develop a marketing plan as in the present invention. In paragraph 26 Schneider merely discloses:

"Through interaction with the present invention, a farm-specific knowledge base is built, retained and referenced for future consultations. Information may be supplemented, as necessary, with updated and regionally-specific crop production and marketing data which is also stored in the portable knowledge base that can be modified at the discretion of the user."

Thus, Schneider merely discloses updating a farm-specific knowledge base with crop production and marketing data. Note that Schneider does not disclose that the agricultural marketing plan requires updated information. **The present invention updates the marketing plan which is critical to its proper implementation.**

Claim 15 requires "tying financial obligations of the agricultural producers to the use of the agricultural marketing plans". The Examiner cites to paragraph 6 and paragraph 17, lines 28-40 of Schneider as disclosing this limitation. Paragraph 6 merely discloses that:

"Finally, the farmer must consider risks. Risk management strategies include, for example, crop rotation, crop diversification, forward contracting (i.e., the practice of selling a crop prior to harvest and/or prior to planting; such a practice reduces market risk by establishing a fixed price) and financial instruments such as, for example, futures options (i.e., contracts giving one party the right to buy/sell a commodity at a particular price during a specific time frame; options are used to hedge risk by balancing an investment position). There are other dimensions of risk including, for example, willingness to implement unproven practices, early adoption of new technologies, new crop varieties and new marketing methods."

All that is disclosed in Schneider is that farmers may have marketing plans and farmers have financial obligations. Schneider fails to disclose that there is any "tying" or other relationship present as Schneider is not directed to an income approach or a selling approach.

The present invention builds a marketing plan with the assistance of crop revenue insurance that assures income thus allowing the marketing plan and crop revenue insurance to underwrite financing while still allowing for income to be increased beyond the assured income.

To further clarify differences between Schneider and claim 15, claim 15 has been amended to require "wherein the updated marketing comprises probabilities of price targets." Support for this amendment is clear from the Specification as originally filed, including at least page 37, lines 8-13. Schneider does not disclose using such marketing data. **Note that this updated marketing data that comprises probabilities of price targets is a far more sophisticated type of marketing data than mere pricing and far more useful in the context of developing and updating a marketing plan.**

For all these reasons, this rejection to claim 15 must be withdrawn. As claim 16 depends from claim 15, this rejection must also be withdrawn. There is, however, an independent basis for patentability of claim 16. Claim 16 further includes "requiring the agricultural producers to use the agricultural marketing plans . . . to receive financing." The Examiner indicates that this is disclosed in paragraph 17 of Schneider. This is simply incorrect. Paragraph 17 of Schneider merely indicates that marketing advisors can assist farmers in developing marketing plans, **whereas the present invention provides the tools and means to create and implement marketing plans.** Schneider is silent as to any nexus between receiving of financing and use of an agricultural marketing plan. Therefore, this rejection must be withdrawn for this independent reason.

To clarify, in case the Examiner has been interpreting the language of claim 16 in a manner unintended by the Applicant, claim 16 has been amended to make clear that the use of the marketing plan is a condition for the financing. In particular, claim 16 now requires

"requiring the agricultural producers to use the agricultural marketing plans as a condition for agricultural producers to receive financing."

With respect to claim 17, in making the rejection, the Examiner interprets some of the limitations in the claim in a manner unintended by the Applicant. Although the Examiner is correct to interpret the claims broadly, as the recent Federal Circuit decision, *Phillips v. AWH Corp.*, No. 03-1269 (Fed. Cir. 7/12/2005), makes clear, the context provided by the specification can not be overlooked when interpreting patent claims.

For example, claim 17 explicitly requires "calculating a marketing financial risk score." The Examiner cites to paragraph 3 of Schneider and indicates that the Examiner interprets "potential outcomes" to be a form of a "score." Paragraph 3 of Schneider merely states that:

"Crop selection decisions are normally comprised of three primary elements objectives, information and constraints. Farm planning decisions are governed by trade-offs between multiple objectives such as, for example, profit maximization (i.e., a collection of decisions and activities that result in the highest returns on assets), risk minimization (i.e., a collection of decisions and activities that result in the least risk given present uncertainties and potential outcomes), desire for independence and inter-generational stewardship (i.e., a collection of decisions and activities which result in the greatest environmental enhancement and the least ecological damage from agricultural activities). The relativistic level of importance of each of these objectives varies for each farmer. Information and advice on crops and markets are also available from extension agents, agricultural lenders, commodity groups, friends, neighbors, private information services and consultants. Finally, the allocation of crops to acreage may be constrained by such factors as, for example, feasible crop types, rotation patterns, resource availability, economic and market conditions and an individual's tolerance of market and natural risk."

Nothing in this disclosure of Schneider describes calculating a marketing financial risk score. The original specification, at p. 30, line 21 to p. 31, line 3 explains that "Marketing financial risks are different from financial risks in that marketing financial risks are more attuned to markets and to income than financial risks." Marketing financial risks and a score are

explained in detail from p. 30, line 21 to p. 37, line 2. **Marketing financial risk is a measure of financial quality, the higher financial risk makes a price risk greater.**

To clarify, and assist in the Examiner's understanding, claim 17 has been amended to state "the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of the agricultural enterprise." Schneider does not appreciate the distinction that needs to be made between financial risks generally and financial risks associated with marketing and income. This is an important distinction made by the present invention. The Examiner is also reminded that Schneider is a production management system as opposed to a selling system, so discloses little with respect to how marketing is accomplished.

Another distinction between claim 17 and Schneider is that claim 17 explicitly requires "receiving a price risk from a marketing service." The Examiner cites to paragraph 13, paragraph 22, and paragraph 140, lines 8-12 of Schneider. Paragraph 13 merely states:

Further, none of the existing programs utilize data from third party industry professionals or sources, such as input supply retailers, manufacturers of seed and crop protection products, crop consultants, crop insurance agents, agricultural lenders, marketing advisors, agricultural certified public accountants and agricultural equipment dealers. The information and data provided by these sources are necessary to obtain the optimal farm management plan for a particular farmer.

Paragraph 22 merely states:

Once a final combination of resources has been selected, the present invention analyzes the sensitivity of the optimal cropping strategy to variances in prices, yields and production costs (i.e., uncontrollable variables or uncertainties). This minimizes risks by establishing upper and lower bounds for various combinations of prices, yields and production costs. For sensitive crop selections, the probabilities of receiving the target prices and reaching the target yields (functions of random variables) are evaluated. If these fall below threshold bounds, parameters are altered and the model is re-analyzed. Results under these various scenarios are then displayed. Where appropriate, further sensitivity analysis is performed. Often combinations of price, yield and resource variations are



analyzed several times--a process ultimately leading to the generation of more refined and less volatile cropping strategies that satisfy the user's objectives.

Paragraph 140 merely states:

User-driven sensitivity analysis can also be accomplished to further understand risk. This method allows the user to generate and evaluate risk scenarios for any cropping scenario. For example, the user can examine the impact of low wheat prices, the effects of drought that impact yield, quality and water consumption, or the impact of blight that could increase production costs and adversely affect yield and/or quality. Common scenarios such as these can be examined as well as any other scenario, since the user can individually or simultaneously alter price, yield and production cost parameters for any crop or combination of crops to represent the risk condition.

All of these excerpts from Schneider are in the context of production as opposed to selling. In particular, the analysis being performed by Schneider is merely to determine a "cropping strategy" or rather a mix of crops to produce. Schneider mentions relying upon probabilities of receiving target prices, but makes clear that those probabilities are computed as functions of random variables and Schneider does not disclose how those probabilities are computed or where they come from. This is completely at odds with "receiving a price risk from marketing service" as claimed. Moreover, this information of Schneider is merely used in production planning to determine the amount of different crops to plant not as a guide to . It is also important to recognize that Schneider discloses allowing a user to alter price. This is inconsistent with using prices and price risk from a marketing service. Claim 17 explicitly requires "receiving a price risk from a marketing service." Therefore, this rejection to claim 17 must also be withdrawn for this independent reason as well.

Claim 17 also specifically requires "determining pre-sell quantities." The Examiner relies upon paragraph 16, lines 6-19 of Schneider to disclose this limitation. This is not disclosed in paragraph 16, lines 6-19 of Schneider. To clarify, claim 17 has been amended to specify that the

step of "calculating a level of crop insurance and determining pre-sell quantities" is performed "using the financial assessment score, the marketing financial risk score and the price risk of the commodity market." It is further noted that Schneider's disclosure is directed towards optimizing cropping strategies and that the present invention is directed towards marketing or selling. In other words, Schneider's system is used to assist the producer in determining how much of what type of crop to plant whereas the present invention is directed towards how to sell what is planted in a way that assures a first level of income while allowing additional income to be made.

Therefore, this rejection to claim 17 should be withdrawn for this independent reason as well.

Claims 20, 22-28 depend from claim 17. Therefore these rejections must be withdrawn as well. In addition, there is an independent reason for patentability for these claims.

With respect to claim 20, claim 20 requires "wherein the step of calculating a marketing financial risk score includes computing a weighted average." This limitation is not disclosed in Schneider. The Examiner cites to paragraph 3 and paragraph 10 of Schneider and interprets an "outcome" of Schneider to be a form of score and interprets "decision analysis" of Schneider to imply the use of the claimed "weighted average" technique. The Examiner does not provide any basis for such interpretation of the language of the claims and it is respectfully submitted that such an interpretation is not reasonable. In any event, claim 17, from which claim 20 depends, has been amended to specify that the marketing financial risk score is "defined as a numeric value describing financial risks related to markets and income of the agricultural enterprise." Schneider does not disclose computing a weighted average to derive such a numeric value. To further clarify, claim 20 has been amended to describe the weighted average as "numeric." Therefore, this rejection to claim 20 must be withdrawn for this independent reason as well. As

claim 22 depends from claim 20, this rejection must be withdrawn as well for this independent reason.

With respect to independent claim 18, claim 18 requires "underwriting financing . . . with a strategic marketing plan." The Examiner cites to paragraph 17 of Schneider as disclosing this limitation. This is not correct. Schneider does not disclose any relationship where financing of a producer is conditioned on the use of a strategic marketing plan. To further clarify, claim 18 has been amended to make clear that it is referring to underwriting financing "of a producer of the agricultural crops." Schneider does not disclose that a user of its system will have any special access to financing. Schneider's system is merely a production system which attempts to optimize crop selection and other production decisions. Schneider's system is not a selling system and thus does not provide the mechanism to assure income based on a marketing plan. To clarify, claim 18 has been amended to specify that the marketing plan "provides the assured income based on a minimum level of crop yield and a predetermined minimum crop price achieved by pre-selling." Claim 18 has also been amended to require "implementing the updated strategic marketing plan to capture additional income beyond the assured income." Thus, claim 18 is even further distinguishable over Schneider. Therefore, for all these reasons, this rejection must be withdrawn. As claim 19 depends from claim 18, this rejection should also be withdrawn.

Claim 19 has been amended, with the original limitation incorporated into claim 18 and a new limitation added. Claim 19 now requires "wherein the financing is provided to a producer conditioned on use of the strategic marketing plan." This is yet another limitation not disclosed in Schneider. Therefore, claim 19 is patentable over Schneider for this additional reason as well.

**Issues Under 35 U.S.C. § 103**

Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Schneider in view of Friedman ("Dictionary of Business Terms"). This rejection is respectfully traversed. First, as previously explained, Schneider is not even legal prior art. Moreover, Schneider is deficient. The Examiner is correct in that Schneider does not disclose that the weighted average includes a weighted Z-factor. The Examiner, however, indicates that Friedman, a dictionary, discloses a weighted Z-score. Thus, the Examiner concludes that at the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the feature of Friedman with Schneider.

This rejection is respectfully traversed. In particular, the Z-factor disclosed by Friedman is specific to manufacturers and not agricultural. Therefore, the Z-score of Friedman would not make sense to use in evaluating an agricultural enterprise. In fact, the Z-factor used in Applicant's invention is specific to agriculture and not the same Z-factor which is disclosed in Friedman. Therefore, there is an independent reason for patentability of claim 21. Moreover, how does the existence of a word in a dictionary create a case of obviousness?

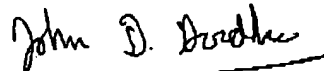
To further assist the Examiner in appreciating the non-obviousness of the present invention, a Declaration of Gerald Murphy is attached. This Declaration shows commercial success, praise by others, unexpected results, and other factors that should be taken into account in any non-obviousness inquiry. The Examiner is asked to consider this additional evidence of non-obviousness.

Therefore, it is respectfully submitted that all claims are in proper form for immediate allowance. Reconsideration and passage to issuance is respectfully requested.

**Conclusion**

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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